

Re K (1980 Hague Convention) (Lithuania) (2015)

[2015] EWCA Civ 720

14/07/2015

Barristers

Private: David Williams QC

Christopher Hames KC

Private: Hassan Khan

Court

Court of Appeal (Civil Division)

Practice Areas

International Children Law

Summary

A judge had been entitled to order an 11-year-old girl to be returned to her father in Lithuania under the Hague Convention on the Civil Aspects of International Child Abduction 1980 art.12, notwithstanding the child's objections. The weight to be given to the objections was reduced by the pressure and maternal influence the child had been under, and the judge had taken account of all the appropriate factors in a way which was not demonstrably wrong.

Facts

The appellant mother appealed against an order that her 11-year-old daughter (E) be returned to the respondent father in Lithuania.

E had been born in Lithuania and lived there with both parents. In 2011, she went to live with her father. In 2012, the mother moved to England. In 2014, the father had agreed to E spending her summer holiday in England with the mother. In August 2014, when he attended the mother's home to collect E, there was a fracas between him and the mother's partner. E remained with her mother. The father sought her return to Lithuania under the Hague Convention on the Civil Aspects of International Child Abduction 1980 art.12. The mother accepted that she had wrongfully retained E, but contended that the case came within art.13 in that E objected to returning to Lithuania and was of sufficient age and maturity for her views to be taken into account. A CAFCASS officer reported that when he met E in January 2015, she was afraid of her father, perhaps having reflected on the August 2014 incident, having ceased to be in contact with him, and having been exposed to the influences and pressures of her maternal family. He concluded that she had strong and rational objections to being returned because "the bubble of respite, fashioned by her mother for her ... was terrifyingly pierced by her father" in the August 2014 incident. The CAFCASS officer gave oral evidence at the hearing. The judge indicated her concerns about his evidence and conclusions, considering that they had been influenced by his view of the August 2014

incident, his description of which had not been balanced. She did not consider E's objections to be genuine because of the maternal influence she had been under, and was not satisfied that considerable weight should be placed on what E had said or that it was in any way determinative. The judge took account of wider factors, including that E was a Lithuanian child who had been wrongfully retained in the UK, and that in returning to Lithuania she would be joining her father, with whom she had lived for nearly three years without complaint. She ordered E's return.

The mother contended that the judge had (1) failed to mention leading cases, although they had been cited to her, which had led to her failure to apply the proper test in relation to the child's objections exception; (2) failed to give proper weight to the CAFCASS officer's evidence as to E's views because he had taken a particular view of the August 2014 incident, and without her having made her own, different findings about the incident, there was no basis to depart from his evidence; (3) made a serious procedural error in "cherry picking" from evidence in the trial bundle and making interventions which might have given the impression that she had made up her mind prematurely.

Held

(1) The mere fact that a judge had not mentioned a particular authority did not mean that she had not had it well in mind. The judge had enormous experience of Hague abduction cases and had had the latest position in relation to child's objections set out for her by counsel. It could be assumed that she had approached her judgment on that basis unless the contrary was demonstrated by what she said in it. E's objection and whether her views should be taken into account were not in issue: the judge's only concern had been how to exercise her discretion in dealing with them. She had looked at the validity and genuineness of the objections in order to determine what weight to give them. The question of influence had weighed heavily in the judge's mind: that was relevant to the weight that should be put on E's views. It was not, however, the only thing the judge had considered: a wide range of factors had come into her evaluation. Her conclusion that there should be a return notwithstanding E's objections was one which was undoubtedly open to her on the evidence, and it had been explained in terms which showed that she had taken into account the appropriate factors and weighed them in a way which was not demonstrably wrong (see paras 39, 48-51 of judgment). (2) A judge had a difficult job deciding what to do about factual disputes, given the summary nature of Hague abduction cases, *M (Children) (Child's Objections: Joinder of Children as Parties to Appeal)*, Re [2015] EWCA Civ 26, [2015] Fam. Law 252 applied. The proper working of the Convention and children's interests would be damaged if the courts allowed applications to become bogged down in protracted hearings and investigations. The judge was justified in being critical of the CAFCASS officer for having attributed blame to the father for the August 2014 incident and describing what had happened in colourful terms, and in approaching his evidence with caution. She had not needed to make her own findings of fact before doing so. In any event, the judge had by no means dismissed the CAFCASS officer's evidence entirely (paras 45-46). (3) There was no evidence of the judge having made up her mind prematurely or approaching the case on the basis of a selective version of the evidence (para.42).

Permission

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